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CONNECTICUT VALLEY ELECTRIC COMPANY, INC.

Petition for Approval of Interim Fuel Adjustment Charge
and Interim Purchased Power Cost Adjustment

Order Approving Increase to Fuel Adjustment Charge and
Purchased_Power Cost Adjustment and Establishing Temporary
Rates

O R D E R N O. 23,465

May 3, 2000

Appearances: Dom D'Ambruoso, Esq. and John Alexander, Esq. of Ransmeier and Spellman on behalf of Connecticut Valley Electric Company; Sarah Knowlton, Esq. and Steven Camerino Esq. of McLane, Graf, Raulerson & Middleton on behalf of the City of Claremont; Michael Holmes, Esq. and Kenneth Traum from the Office of the Consumer Advocate on behalf of residential ratepayers; Gary Epler, Commission Counsel, and Thomas Frantz, Director of the Economics Department of Commission Staff appearing on behalf of the Staff of the Commission.

I. PROCEDURAL BACKGROUND

On March 6, 2000, the Federal District Court¹ issued its Decision and Order in the matter of *Public Service Company of New Hampshire, et al. v. Patch, et al.*, District of New Hampshire C.A. No.97-97-JD, District of Rhode Island, C.A. No. 97-121-L. The Court determined that the Plaintiff, Connecticut Valley Electric Company (CVEC), is entitled to a permanent injunction mandating that the New Hampshire Public

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Of the District of Rhode Island, sitting by designation.

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Utilities Commission (Commission) allow CVEC to pass through to its retail customers its wholesale costs under the RS-2 Rate Schedule. A Judgment and Permanent Injunction was entered by the Court on March 21, 2000. The effect of this Permanent Injunction is to require the recovery from retail ratepayers of the balance of the wholesale rate in effect since January 1997 not already recovered, and the increased incremental cost estimated for the remainder of the current year.

On March 17, 2000, Connecticut Valley Electric Company (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) a letter requesting an order *nisi* approving an Interim Fuel Adjustment Charge ("FAC") and Interim Purchased Power Cost Adjustment ("PPCA") for April-December 2000. CVEC stated that the purpose of the letter was to recover the balance of its wholesale power costs as mandated by the Permanent Injunction. Accompanying its letter request were supporting schedules providing reconciliation of the FAC and PPCA for 1997-2000, the proposed rate changes and modified tariff pages.

CVEC requested that the proposed rate changes become effective April 1, 2000, on a bills rendered basis, in order

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to recover its expected 2000 RS-2 costs and a portion of the undercollection caused by previously disallowed RS-2 costs. The Company proposed to recover the remaining portion of the undercollection in its 2001 FAC/PPCA request, and thereby recover the entire undercollection by December 31, 2001. The recovery method proposed was alleged to produce constant rates during this 21 month period, assuming that its expected costs during this period remain as currently projected. If power costs are higher or lower in 2001 than in 2000, the difference was to be reflected in the annual filing made by December 1 for effect on the first day of 2001.

In order to achieve an effective date of April 1, 2000, the Company requested that the Commission issue an order *nisi* and not hold a hearing. CVEC claimed that pursuant to Puc 1603.07(a)(2) the Commission can issue an order providing for such effective date without the usual 30 days notice to the Commission and additional notice to the public. The Company submitted that no hearing was necessary in view of the permanent injunction issued by the Federal District Court and the fact that the forecast costs were reviewed at a hearing in Docket No. DE 99-185 in December 1999.

CVEC also requested that the Commission waive

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application of Puc 1203.05(a), which requires that rate changes be implemented on a service rendered basis, and allow the Company to implement the changes on a bills rendered basis, claiming that this will reduce customer confusion, lower administrative costs, and avoid any increased undercollection due to further delay. Under this proposal, the FAC and PPCA were to be increased to \$0.0073/kWh and \$0.0140/kWh, respectively. Assuming an effective date of April 1, 2000, the percentage increase in total average rates across all classes was to be 11.6%.

In the alternative, if an April 1, 2000 effective date was not possible, CVEC requested an increase of its FAC and PPCA rates to \$0.0074/kWh and \$0.0147/kWh, respectively, on bills rendered on or after May 1, 2000, which will result in a percentage increase in average rates across all classes of 12.3%.

On March 22, 2000, the City of Claremont filed a letter with the Commission requesting that the Commission refrain from issuing an order *nisi* in this matter since judgment had not yet been entered by the Federal District Court. In addition, Claremont requested that the Commission schedule a hearing on CVEC's request. The Office of Consumer

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Advocate concurred in this request.

On March 24, 2000 the Commission issued an Order of Notice setting a hearing on this matter for April 7, 2000. The Order specifically noted that issues to be addressed at the hearing included whether the interim rates requested by CVEC be established as temporary rates pursuant to RSA 378:27, and whether, if temporary rates were prescribed under RSA 378:27, good cause existed to require CVEC to file a bond to secure the repayment of the difference between such temporary rates and the rates which the Commission may ultimately find should have been in effect during the temporary period.

On March 30, 2000, CVEC filed a motion to limit the scope of the scheduled hearing to exclude consideration of temporary rates and a bond requirement, arguing that a bond requirement was not consistent with and would be in violation of the federal court's permanent injunction. The City of Claremont filed an objection to CVEC's motion on April 6, 2000, stating that it would be in the public interest to set temporary rates and require the posting of a bond by CVEC to ensure the repayment of any rate increase.

On April 5, 2000, the Commission filed a *Motion for Stay Pending Appeal* with the United States Court of Appeals

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for the First Circuit. The Motion alleged that if the permanent injunction were vacated on appeal, ratepayers would be entitled to refunds, and based upon CVEC's statements and affidavits, it was nearly certain that the company would be unable to meet that refund obligation. The Commission also argued that a stay of the permanent injunction was appropriate because any temporary inability to collect the higher rates would not harm CVEC or its parent, Central Vermont Public Service Company. Finally, the Commission contended that staying the District Court's order would leave customer rates at the current level and avoid the potential tremendous fluctuation of retail rates, and was an appropriate middle ground pending the Court of Appeals' consideration of the appeal.

A hearing before the Commission was held on CVEC's request for an Interim FAC and PPCA on April 7, 2000.

On April 12, 2000, the Court of Appeals denied the Commission's Motion for Stay on the condition that CVEC escrow the funds that it would collect above the December 31, 1997 rate level pending a final decision on this appeal.

In a letter filed with the Commission on April 21, 2000, CVEC's Senior Vice-President and General Counsel Joseph Kraus proposed procedures to escrow revenues collected

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pursuant to an interim FAC and interim PPCA rates in excess of current FAC and PPCA rates. Under these procedures, CVEC's customers would be charged an Interim FAC of \$0.0074 per kWh and Interim PPCA of \$0.0147 per kWh as originally proposed by the company in its March 17, 2000 letter, on a bills-rendered basis beginning May 1, 2000. The incremental difference between these interim levels and the current levels of the FAC and PPCA, multiplied by the kWh sales billed each day would equal the Daily Escrow Amount. The Company will escrow the Daily Escrow Amount 29 days after the date of billing in an interest bearing account with an independent financial institution, the Chittenden Bank ("Bank"). A draft proposed escrow agreement between the Bank and CVEC was attached to Mr. Kraus' letter.

Under the proposed escrow agreement, the Bank will hold the escrowed amounts pending the issuance, by the First Circuit Court of Appeals, of its order on the Commission's appeal of the District Court's Judgment and Permanent Injunction. In the event the Court of Appeals affirms the District Court, the entire escrow amount, including interest and net of fees, will be dispersed to CVEC, upon CVEC's presentation of the Order of the Court of Appeals to the Bank. In the event the District Court is reversed, the Bank shall

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disburse the escrow amount to CVEC on a daily basis until the entire escrow is depleted, in accordance with a schedule presented by CVEC and affirmed or acknowledged by the Commission in writing. If the matter is remanded to the District Court, the escrow will be disposed of in accordance with the direction of the Court of Appeals or the District Court. In the alternative, the Bank may disburse the escrow account in accordance with any instructions executed by both CVEC and the Commission.

II. COMMISSION ANALYSIS

As required by the Judgment and Permanent Injunction issued by the District Court on March 21, 2000, and as a consequence of the First Circuit Court of Appeals' denial of the Commission's Motion for Stay on condition that CVEC escrow the funds that it collects above the December 31, 1997 rate level pending a final decision of that Court, and CVEC having agreed to escrow such funds, the Commission is required to allow CVEC to recover through its retail rates all costs it incurs pursuant to the RS-2 Rate Schedule. On this basis, the Commission finds that CVEC's proposed Interim FAC and Interim PPCA are a reasonable method for achieving the permanent injunction's mandate.

In addition, and to provide further assurance of the

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Commission's jurisdiction over the disposition of the incremental difference between these interim rates and such rates as the Commission may ultimately find just and reasonable, and because we have reserved our authority to open a prudence review of the 1999 and 2000 fuel and purchased power capacity costs under the RS-2 schedule based on the outcome of the federal court proceedings, the Commission will fix these Interim FAC and PPCA rates as Temporary Rates pursuant to our authority under RSA 378:27.

Based upon the foregoing, it is hereby

ORDERED, that, subject to the condition that it escrow the incremental difference between the Interim FAC and Interim PPCA rates proposed to become effective May 1, 2000, and the current FAC and PPCA rates, and subject to the further condition that it immediately enter into the escrow agreement with Chittenden Bank as referenced in its letter to Commission Executive Director Getz of April 21, 2000, and abide by the terms therein, Connecticut Valley Electric Company may set temporary rates at the Interim FAC and Interim PPCA levels of \$0.0074 per kWh and of \$0.0147 per kWh, respectively, for bills issued on and after May 1, 2000; and it is

FURTHER ORDERED, that such interim rates are deemed to be Temporary Rates pursuant to RSA 378:27.

By order of the Public Utilities Commission of New

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Hampshire this third day of May, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary